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Attorneys for Plaintiff
SCOTT SALYER, individually, and as
Trustee of the Scott Salyer Revocable
Trust



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)

Pursuant to Rule 7-4(d) of the Civil Local Rules for the Northern District of California, Plaintiff, Scott Salyer, individually, and as Trustee of the Scott Salyer Revocable Trust (“Plaintiff”), hereby requests the Court’s approval to file supplemental briefing (a “Surreply”) in Opposition to Defendants’ Motion to Dismiss, or in the Alternative, to Stay this Action. This supplemental briefing would not exceed **seven (7) pages** in length and would be filed on or before 12:00 p.m. on **February 21, 2006** (February 20 is a Court holiday). The hearing date on

1 this Motion is February 27, 2006. Defendants' Reply is due today (February 13, 2006). Good
 2 cause exists for permitting Plaintiff to file this supplemental briefing in that:

3 1. Based upon the Court's Order Continuing the Hearing on this Motion from
 4 December 19, 2005 to February 27, 2006, Defendants have had **two and a half months** to
 5 prepare and file their Reply Brief in Support of their Motion to Dismiss, or in the Alternative,
 6 for a Stay. The Court issued this Scheduling Order on November 29, 2005 -- the very day after
 7 Plaintiff had filed his Opposition, in a timely manner, to Defendants' Motion.

8 2. On December 2, 2005, Plaintiff, citing the briefing schedule that had resulted
 9 from the Court's November 29, 2005 Order, filed a Request for Clarification of said Order. (A
 10 true and correct copy of this Request for Clarification is attached as Exhibit A to the Declaration
 11 of Brian P. Maschler).

12 3. The Court denied Plaintiff's Request for Clarification. Thus, per Civil Local Rule
 13 7-3(c), Defendants' reply papers were due on February 13, 2006, rather than on December 5,
 14 2005, when the Reply would have been due under the original hearing schedule. Judge Ware's
 15 clerk, in notifying Plaintiff's counsel of the Court's denial of Plaintiff's Request for
 16 Clarification, noted that one avenue of recourse would be to seek leave to file a surreply.

17 4. On February 13, 2006, before Plaintiff's counsel had received Defendants' reply
 18 papers, Plaintiff's counsel requested of defense counsel, Ms. Rebecca Connolly of Grunsky,
 19 Ebey, Farrar & Howell, that Defendants stipulate to the supplemental briefing requested herein.
 20 Defendants' counsel refused, stating that "we [plaintiff] would just have to file an application [to
 21 the Court]." Defense counsel gave no explanation for their refusal.

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7. In view of the foregoing, and the fact that Defendants' Motion is a dispositive motion, the supplemental briefing requested herein is both fair and reasonable.

Respectfully submitted,

Dated: February 13, 2006

GORDON & REES LLP

By: _____ /s/
BRIAN P. MASCHLER
Attorneys for Plaintiff
SCOTT SALYER, individually, and SCOTT
SALYER, as Trustee of the Scott Salyer
Revocable Trust

Plaintiff's request is granted. The hearing date is continued from February 27 to March 13, 2006 at 9:00 a.m.

dated: February 17, 2006

James Wase

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